

Illinois Regulation is a summary of the weekly regulatory decisions of State agencies published in the Illinois Register and action taken by the Illinois General Assembly's Joint Committee on Administrative Rules. Illinois Regulation, also titled The Flinn Report in memory of founding JCAR member Rep. Monroe Flinn, is designed to inform and involve the public in changes taking place in agency administration.

Emergency Rules

■ SOCIAL ISOLATION

The DEPARTMENT OF PUBLIC HEALTH adopted emergency amendments to Skilled Nursing and Intermediate Care Facilities Code (77 IAC 300; 45 Ill Reg 14003), Sheltered Care Facilities Code (77 IAC 330; 45 Ill Reg 14022), and Illinois Veterans' Homes Code (77 IAC 340; 45 Ill Reg 14039), all effective 10/22/21 for a maximum of 150 days, implementing Public Act 102-640, which requires long term care facilities to implement policies to prevent social isolation among residents. "Social isolation" is defined in the PA and in the emergency rule as occurring when a resident of a long-term care facility is unable to engage in social interactions or religious and recreational activities with other facility residents or with family members, friends, loved ones, caregivers and external support systems. Facilities shall adopt

COVID-19 ACTIONS

Executive Orders of the Governor concerning the COVID-19 public health emergency can be accessed at <https://www2.illinois.gov/government/executive-orders>. Emergency rules adopted by State agencies will be summarized in The Flinn Report as they are published in the *Illinois Register*.

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written policies that provide for the availability of assistive and supportive communication technology (e.g., computers, video or audio conferencing) to residents and that ensure appropriate staff are in place to prevent social isolation of residents. These policies shall generally encourage in-person contact, communication, religious and recreational activity

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Proposed Rulemaking

■ PROFESSIONAL LICENSING

The DEPARTMENT OF FINANCIAL AND PROFESSIONAL REGULATION proposed amendments to Administrative Procedures for General Professional Regulation Under the Administrative Code (68 IAC 1130; 45 Ill Reg 13807) implementing two Public Acts. PA 102-308 requires all persons whose professional licensing includes a continuing education (CE) requirement to complete sexual harassment prevention training prior to renewing their licenses. PA 102-4 requires certain holders of health care licenses, including physicians, dentists, chiropractors, nurses, physician assistants, physical therapists, pharmacists, professional counselors and therapists, and speech-language pathologists, to complete a course

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ADOPTED RULES: Rules adopted by agencies this week. **EMERGENCY RULES:** Adopted for a temporary period not to exceed 150 days.
PROPOSED RULES: Rules proposed by agencies this week, commencing a 45-day First Notice period during which public comments must be accepted.
PEREMPTORY RULES: Rules adopted without prior public notice or JCAR review as authorized by 5 ILCS 100/5-50.
■ Designates rules of special interest to small businesses, small municipalities, and not-for-profit corporations. Agencies are required to consider comments from these groups and minimize the regulatory burden on them.
QUESTIONS/COMMENTS: Submit mail, email or phone calls to the agency personnel listed below each summary.
RULE TEXT: Available on the Secretary of State (www.cyberdriveillinois.com) and General Assembly (www.ilga.gov) websites under Illinois Register. Second Notice text (original version with changes made by the agency during First Notice included) is available on the JCAR website.

Emergency Rules

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except when prohibited, restricted or limited by federal or State action (e.g., public health emergency orders). When such restrictions are in place, facilities shall encourage residents to use assistive and supportive technology to maintain contact with others; provide a means for residents to request access to assistive/supportive technology devices; and have procedures in place to insure that these devices are accessible to all residents and are properly maintained (including cleaning/disinfection). When in-person visitation is not feasible, virtual visitation schedules shall be established for residents upon admission or upon a request from the resident or the resident's representative. Facility policies regarding virtual visitation shall be in addition to, and shall not replace, in-person visitation policies. Facilities may also apply to DPH for grants to fund the purchase of assistive communication technology. A facility that fails to implement the policies prescribed in the PA and the emergency rule commits a Type C (low risk) violation that carries an administrative penalty (fine) of \$250 to \$500 per violation, but this penalty will not be imposed on any facility prior to 1/1/23. Nursing homes are affected by these emergency rules.

Questions/requests for copies of the 3 DPH emergency rules: Tracey Trigillo, DPH, Lincoln Plaza, 524 S. 2nd St., 6th Fl., Springfield IL 62701, 217/782-1159, dph.rules@illinois.gov

■ UTILITY ASSISTANCE

The DEPARTMENT OF COMMERCE AND ECONOMIC OPPORTUNITY adopted a new Part by emergency rulemaking titled Low Income Household Water Assistance Program (47 IAC 105; 45 Ill Reg 13987), effective 10/25/21 for a maximum of 150 days. An identical proposed amendment appears in this week's *Illinois Register* at 45 Ill Reg 13803. The emergency and proposed rules establish eligibility, application and other requirements for the Low Income Household Water Assistance Program (LIHWAP) established under the federal Consolidated Appropriations Act (CAA) and American Rescue Plan Act (ARPA) to assist households in paying water service bills. Household eligibility criteria are the same as for the Low Income Home Energy Assistance Program (LIHEAP), including household income of no more than 150% of the Federal Poverty Level or 60% of State Median Income. Joint applications for both LIHWAP and LIHEAP may be filed at a Local Administrative Agency (LAA) serving the area in which the applicant's household is located. A list of LAAs and their locations may be obtained at DCEO's website or by calling or writing to any DCEO office. DCEO shall determine the amount of LIHWAP assistance available to each county based on its "index of need" (number of persons in poverty in the county divided by the Statewide number of persons in poverty). Applications must include copies of the household's water/sewer

bills or a statement from a landlord that this amount is included in their rent, along with proof of income for all household members age 18 or older. Households that are behind on water/sewer payments by \$250 or more may receive assistance, which will be provided on an emergency basis if service has been or is about to be disconnected. The maximum household assistance amount will be established by DCEO but will not exceed \$1,500 per year. LAAs will make these payments on behalf of qualifying households in accordance with their grant agreements. Those affected by this emergency rule include water and sewer service providers (including small municipalities) and LAAs.

■ BUSINESS ASSISTANCE

DCEO also adopted emergency amendments to the Part titled Back to Business Program (14 IAC 691; 45 Ill Reg 13979) effective 10/25/21, amending previous emergency rules that were effective 9/1/21 for the remainder of their 150-day term. The emergency amendments clarify the following aspects of DCEO's Back to Business (B2B) grant program for businesses impacted by the COVID-19 public health emergency: that businesses excluded from receiving federal grants via the System for Award Management are not eligible for B2B grants; that businesses which are noncompliant with COVID-19

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Adopted Rules

■ WATERFOWL HUNTING

The DEPARTMENT OF NATURAL RESOURCES adopted amendments to Duck, Goose and Coot Hunting (17 IAC 590; 45 Ill Reg 7657) effective 10/25/21. The rulemaking implements DNR's annual updates to waterfowl hunting rules, which include opening or closing of State-managed sites to hunting; changes in hunting days/hours or other restrictions; and changes in procedures for obtaining hunting licenses or reporting the number of waterfowl harvested. Since 1st Notice, in response to public comment, DNR has added Sundays (originally, Tuesdays, Thursdays and Saturdays) to the legal hunting days at the Baker Tract of the Sanganois State Fish and Wildlife Area during the Central Zone waterfowl hunting season. Those affected by this rulemaking may include outfitters and hunting guides.

■ OIL & GAS DRILLING

DNR also adopted amendments to the Part titled The Illinois Oil and Gas Act (62 IAC 240; 45 Ill Reg 8609), effective 10/25/21, changing the spacing requirements for drilling and operating oil wells. All oil wells must be located within 10 acres of surface area within a quarter-quarter-quarter section of land; alternate spacing requirements for certain oil wells that tap into reservoirs are being removed. The rulemaking also allows expert opinions on geological and engineering conditions within the area of review to be included among the evidence submitted to DNR for review of a Class I, Underground Injection Control Permit, and updates geological terminology. Those affected by this rulemaking include entities engaged in oil and natural gas well drilling in Illinois.

Questions/requests for copies of the 2 DNR rulemakings: John Fischer, DNR, One Natural Resources Way, Springfield, IL 62702, 217/782-1809.

■ NURSING HOMES

The DEPARTMENT OF PUBLIC HEALTH adopted amendments to Skilled Nursing and Intermediate Care Facilities Code (77 IAC 300; 45 Ill Reg 9382), effective 10/25/21, replacing emergency amendments that were effective 7/8/21. The rulemaking implements a provision of a federal consent decree in *Colbert vs. Pritzker*, which requires that Medicaid-eligible adults with disabilities who reside in nursing homes in Cook County (Colbert Class residents) be advised of their right to seek appropriate placement in a community-based setting. Affected nursing homes must post printed notices advising Colbert Class

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Proposed Rulemaking

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on "implicit bias awareness" as part of their continuing education prior to each license renewal, effective 1/1/22. The rulemaking defines implicit bias as "a form of bias that occurs automatically and unintentionally, that nevertheless affects judgments, decisions and behaviors". The rulemaking provides that sexual harassment prevention courses conducted by an employer in accordance with the Illinois Human Rights Act and

implicit bias awareness courses conducted for purposes of professional accreditation or certification or as part of an institutional practice agreement satisfy these requirements and can be counted toward a licensee's required continuing education hours. A person who holds multiple licenses is only required to take the sexual harassment or implicit bias course once per renewal period and does not have to repeat it for each license, although the course will count toward CE for all licenses

held. The rulemaking also clarifies who may conduct these courses and the minimum topics for such courses. Persons who hold professional licenses granted by DFPR are affected by this rulemaking.

Questions/requests for copies/ comments through 12/20/21: Craig Cellini, DFPR, 320 W. Washington St., 2nd Floor, Springfield, IL 62786, 217/785-0813, fax: 217/557-4451.

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public health directives, delinquent on State tax payments or in default on a State debt may be required to return B2B funds received if the deficiencies are not corrected within a reasonable time; and that the assistance amount per business established in the original emergency rule (1/6 of the business' total decline in revenue from 2019 to 2020) will be rounded up to the nearest \$5,000. Small businesses that have applied for or received B2B grants may be affected.

Questions/requests for copies/comments on the proposed Part 105 rulemaking through 12/20/21: Jolene Clarke, DCEO, 500 E. Monroe St., Springfield IL 62701, jolene.clarke@illinois.gov

■ UNEMPLOYMENT BENEFITS

The DEPARTMENT OF EMPLOYMENT SECURITY

adopted an emergency amendment to the Part titled Recovery of Benefits (56 IAC 2835; 45 Ill Reg 13994), effective 10/25/21 for a maximum of 150 days. An identical proposed amendment appears in this week's *Register* at 45 Ill Reg 13805. The emergency and proposed rules allow DES to waive collection of overpaid federal or State unemployment benefits or Short-Time Compensation (STC; a State program of partial unemployment benefits for persons whose work hours have been reduced) received on or after 3/8/20 until the end of the COVID-19 Gubernatorial Disaster Proclamations. An individual has 45 days after receiving a notice of overpayment from DES to request this waiver. DES will waive recovery of these overpayments if it determines that the overpayment was not the fault of the recipient and that recovery would be "contrary to equity and good

conscience". The latter condition will be deemed to have been met if recovery would cause financial hardship to the recipient; if the recipient relinquished a valuable right, or changed positions for the worse, based on those benefits or on a notice of benefits; or if recovery could be unconscionable under the circumstances. A request to waive recovery of any form of unemployment received while Federal Pandemic Unemployment Compensation (FPUC) was added to that amount will also be treated as a waiver request for FPUC if it was included in the overpayment. Persons receiving unemployment or STC assistance are affected.

Questions/requests for copies/comments on the proposed rulemaking through 12/20/21: Kevin Lovellette, DES, 33 S. State St., Room 930, Chicago IL 60603, 312/793-1224, Kevin.Lovellette@illinois.gov

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residents of their right to seek community placement, their right to be free of retaliation for seeking such placement, and advising them of how to report any attempted retaliation for exercising these rights. Nursing homes in Cook County are affected by this rulemaking.

CHILDREN'S HEALTH CARE

DPH also adopted amendments to Children's Community-Based

Health Care Center Code (77 IAC 260; 45 Ill Reg 7928) effective 10/25/21, affecting children's community-based health care centers (CCBHCs; sites that provide transitional care for up to 120 days, or respite care for up to 14 days, to medically fragile/technology dependent children who do not require or no longer require hospitalization). The rulemaking implements updated federal Centers for Medicare and Medicaid Services requirements regarding compliance with the 2012 edition of the National Fire

Protection Association 101 Life Safety Code. This rulemaking also clarifies procedures for respite care CCBHC admissions and allows respite care stays to be extended beyond 14 days, with approval from the Division of Specialized Care for Children, for family emergencies such as funerals or recovery of the child's primary caregiver from a medical event. Other provisions add and update definitions (e.g., advanced practice registered nurse,

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Adopted Rules

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caregiver, medical plan of care, serious safety event) and update various Sections as a result of discussions with providers. Since 1st Notice, DPH has expanded the definition of health care provider to include advanced practice registered nurses and physician assistants as well as physicians.

Questions/requests for copies of the 2 DPH rulemakings: Tracey Trigillo, DPH, 524 S. 2nd St., 6th Fl., Springfield IL 62701, 217/782-1159, dph.rules@illinois.gov.

■ COMMUNITY CARE

The DEPARTMENT ON AGING adopted amendments to Community Care Program (89 IAC 240; 45 Ill Reg 8172) effective 10/21/21, implementing updated service cost maximums effective 4/1/21 for in-home services and for

services that include adult day care. The cost maximums are based on the customer's Determination of Need (DON) score ranging from 29 to 100. Since 1st Notice, DonA has corrected the effective date for the adult day care cost maximums. Providers of CCP in-home and adult day services are affected.

Questions/requests for copies: James Shovlin, DonA, One Natural Resources Way, Suite 100, Springfield IL 62702-1271, 217/524-7945.

TORTURE COMMISSION

The TORTURE INQUIRY AND RELIEF COMMISSION adopted amendments to Organization, Public Information, Procedures, and Rulemaking (2 IAC 3500; 45 Ill Reg 9404) effective 10/25/21. The rulemaking removes a Section detailing how and when

members of the Commission must recuse themselves from a case due to conflict of interest, and also removes provisions that limit the circumstances under which TIRC will appoint an attorney for an indigent claimant. (TIRC investigates claims by persons with felony convictions in Cook County that their convictions were based on information acquired by police torture or mistreatment.) TIRC has repealed these provisions, which were initially adopted by internal rulemaking effective 7/29/20, so that they can be adopted via the regular rulemaking process with opportunity for public comment.

Questions/requests for copies: Rob Olmstead, TIRC, 100 W. Randolph St., Suite 5-100, Chicago IL 60601, 312/814-1094.

Second Notices

The following rulemakings were moved to Second Notice this week by the agencies listed below, commencing the JCAR review period. These rulemakings will appear in next week's *Illinois Register* and be considered at the November 16, 2021, meeting to be held in Chicago. Other items not published in the *Register* or The Flinn Report may also be considered. Further comments concerning these rulemakings should be addressed to JCAR using the contact information on page 1.

IL STATE POLICE

Firearm Owners' Identification Card Act (20 IAC 1230; 45 Ill Reg 10938) proposed 9/10/21

Firearm Concealed Carry Act Procedures (20 IAC 1231; 45 Ill Reg 10961) proposed 9/10/21

STATE BOARD OF EDUCATION

Public Schools Evaluation, Recognition and Supervision (23 IAC 1; 45 Ill Reg 8187) proposed 7/9/21

Agricultural Education Program (23 IAC 75; 45 Ill Reg 8202) proposed 7/9/21